

21 C.J.S. Courts § 121

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Courts

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III. Creation and Constitution; Officers of Courts

B. Nonjudicial Officers and Employees Generally; Interpreters

1. General Considerations

§ 121. Nonjudicial officers and employees; generally

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Ministerial officers may be provided for the courts and such officers are subject to their supervision.

The legislative authority may provide for court officers with power to perform ministerial duties necessary in the administration of the law.¹ The power to appoint such officers, within such limitations as are prescribed by statute, may be expressly or impliedly delegated to the courts.²

In the absence of contrary legislation, courts have inherent power to provide themselves with appropriate instruments required for the performance of their duties, including authority to appoint persons to aid the court in the performance of special administrative or judicial duties.³ Absent independent constitutional authorization, the power of the court to hire personnel may not be affected by any law. Thus, for example, a county nepotism rule affected the power of the judiciary

to hire court-appointed personnel, and therefore such rule was constitutionally inapplicable to court-appointed personnel.⁴

While the exercise of a court's authority to appoint or hire personnel depends on the sound discretion of the trial judge,⁵ the power to provide personnel should be exercised sparingly, and it should be invoked only when necessary personnel are not provided by the other branches of government through the traditional and conventional methods.⁶

As a general rule, the conduct of the court's ministerial officers and others connected with its judicial proceedings is always subject to the control and discipline of the court,⁷ and the court's exercise of its power to control its officers will not be disturbed unless there is an abuse of discretion.⁸ The court may restrict activities of court-appointed employees that give the appearance of judicial impropriety,⁹ including the private practice of law,¹⁰ and participation in political activity.¹¹

Immunity.

Court officers or employees are protected by judicial or quasi-judicial immunity when they perform functions intimately related to, or which amount to an integral part of, the judicial process.¹² However, an officer is entitled to immunity only where the officer's functions are discretionary and not ministerial.¹³

Compensation.

Judges do not have authority to set salaries of court personnel unless that authority has been properly delegated to them by the legislative branch.¹⁴ Where so provided by statute, the sole power to fix the compensation of particular court officers and employees is vested in the judge.¹⁵

Dismissal.

Courts have the authority to discharge court employees,¹⁶ and a judge may dismiss an at-will employee¹⁷ with or without cause.¹⁸ However, under a statute so providing, certain nonjudicial officers or employees have the right to be dismissed only for just cause after a hearing and appeal,¹⁹ and under a rule, certain noncompetitive class employees, other than those holding confidential positions or performing functions influencing policy, have a right to a hearing with regard to termination of employment.²⁰ It is not an impermissible delegation of judicial authority for the

judge not to draft every word of an order or not to cite-check his own opinions; the key is that the subordinate is acting pursuant to instructions from, and under the supervision of, the judge and that the judge exercises authority over the substantive disposition of the matters presented to him.²¹

CUMULATIVE SUPPLEMENT

Cases:

Absolute immunity is extended to certain persons other than the judge who perform functions closely associated with the judicial process, including law clerks, since a law clerk is probably the one participant in the judicial process whose duties and responsibilities are most intimately connected with the judge's own exercise of the judicial function. [Acres Bonusing, Inc v. Marston](#), 17 F.4th 901 (9th Cir. 2021).

As general matter, law clerks are subject to ethical duties similar to their judges. [In re al-Tamir](#), 993 F.3d 906 (D.C. Cir. 2021).

[END OF SUPPLEMENT]

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Footnotes

- 1 R.I.—[Gorham v. Robinson](#), 57 R.I. 1, 186 A. 832 (1936).
- 2 Fla.—[Blitch v. Buchanan](#), 100 Fla. 1202, 131 So. 151 (1930), adhered to on reh'g, 100 Fla. 1242, 132 So. 474 (1931).
- 3 U.S.—[In re Peterson](#) (State Report Title: Ex Parte Peterson), 253 U.S. 300, 40 S. Ct. 543, 64 L. Ed. 919 (1920).
- W. Va.—[Aluise v. Nationwide Mut. Fire Ins. Co.](#), 218 W. Va. 498, 625 S.E.2d 260 (2005).
- 4 Pa.—[Matter of Antolik](#), 93 Pa. Commw. 258, 501 A.2d 697 (1985).
- 5 Mo.—[In re 1984 Budget for Circuit Court of St. Louis County](#), 687 S.W.2d 896 (Mo. 1985).
- Wash.—[Certification from the United States District Court for the Eastern District of Washington in Crossler v. Hille](#), 136 Wash. 2d 287, 961 P.2d 327 (1998).
- 6 N.J.—[Matter of Court Reorganization Plan of Hudson County](#), 161 N.J. Super. 483, 391 A.2d 1255 (App. Div. 1978), judgment aff'd, 78 N.J. 498, 396 A.2d 1144 (1979).
- 7 Mass.—[First Justice of Bristol Div. of Juvenile Court Dept. v. Clerk-Magistrate of Bristol Div. of Juvenile Court Dept.](#), 438 Mass. 387, 780 N.E.2d 908 (2003).

Pa.—*Reznor v. Hogue*, 63 Pa. Commw. 600, 438 A.2d 1013 (1982).

8 Cal.—*Chambers v. Superior Court*, 121 Cal. App. 3d 893, 175 Cal. Rptr. 575 (3d Dist. 1981).

9 N.J.—*Matter of Randolph*, 101 N.J. 425, 502 A.2d 533 (1986).

Pa.—*In re Prohibition of Political Activities by Court-appointed Emp.*, 473 Pa. 554, 375 A.2d 1257 (1977).

10 N.Y.—*Goldstein v. Bartlett*, 92 Misc. 2d 262, 401 N.Y.S.2d 706 (Sup 1978).

11 N.J.—*Matter of Randolph*, 101 N.J. 425, 502 A.2d 533 (1986).

Running for, or holding, office

The prohibition against political activity on the part of appointed court employees is concerned with both running for public office and the holding of public office.

Pa.—*In re Dobson*, 517 Pa. 19, 534 A.2d 460, 43 Ed. Law Rep. 712 (1987).

12 Ariz.—*Acevedo by Acevedo v. Pima County Adult Probation Dept.*, 142 Ariz. 319, 690 P.2d 38, 44 A.L.R.4th 631 (1984).

Conn.—*Carrubba v. Moskowitz*, 274 Conn. 533, 877 A.2d 773 (2005).

Law clerk

Judicial immunity covers law clerks with respect to discretionary acts that implement judicial decisions or that are performed at the direction or under the supervision of a judge.

U.S.—*Bliven v. Hunt*, 418 F. Supp. 2d 135 (E.D. N.Y. 2005).

A.L.R. Library

Applicability of judicial immunity to acts of clerk of court under state law, 34 A.L.R.4th 1186.

13 Ill.—*Richardson v. Grundel*, 85 Ill. App. 3d 46, 40 Ill. Dec. 569, 406 N.E.2d 575 (3d Dist. 1980).

Relaying information

A court officer's act of relaying, at the court's direction, certain communications between the court and the defendant after the defendant concededly waived his right to be present at trial and refused to leave the court pens was purely ministerial.

N.Y.—*People v. Felder*, 17 A.D.3d 126, 793 N.Y.S.2d 20 (1st Dep't 2005).

Failure to produce transcript

A court reporter was not absolutely immune from damages liability for failing to produce the transcript of a federal criminal trial; the tasks performed by the court reporter were not discretionary and were not functionally comparable to that of a judge.

U.S.—*Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 113 S. Ct. 2167, 124 L. Ed. 2d 391 (1993).

14 Ark.—*Abbott v. Spencer*, 302 Ark. 396, 790 S.W.2d 171 (1990).

15 Mich.—*Employees and Judge of Second Judicial Dist. Court, Second Div. v. Hillsdale County*, 423 Mich. 705, 378 N.W.2d 744 (1985).

N.Y.—*People ex rel. Wingate v. Taylor*, 166 Misc. 13, 1 N.Y.S.2d 233 (Sup 1937), order *aff'd*, 254 A.D. 749, 4 N.Y.S.2d 52 (2d Dep't 1938), order *aff'd*, 279 N.Y. 246, 18 N.E.2d 143 (1938).

16 N.Y.—*Connolly v. Williams*, 210 A.D.2d 19, 618 N.Y.S.2d 808 (1st Dep't 1994).

Pa.—*Reznor v. Hogue*, 63 Pa. Commw. 600, 438 A.2d 1013 (1982).

Municipal court

A municipal judge has the inherent power to dismiss a municipal court administrator in the exercise of his or her judicial functions as an agent or officer of the municipality, not of the state.

Nev.—Nunez v. City of North Las Vegas, 116 Nev. 535, 1 P.3d 959 (2000).

17

Ala.—Williams v. Killough, 474 So. 2d 680 (Ala. 1985).

Wash.—Certification from the United States District Court for the Eastern District of Washington in Crossler v. Hille, 136 Wash. 2d 287, 961 P.2d 327 (1998).

18

Mo.—Williams v. Jones, 562 S.W.2d 391 (Mo. Ct. App. 1978).

19

Or.—Hensley v. State Court System Appeals Bd., 72 Or. App. 64, 695 P.2d 65 (1985).

20

N.Y.—Rodman v. Bartlett, 93 Misc. 2d 292, 402 N.Y.S.2d 773 (Sup 1978).

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U.S.—In re Judicial Misconduct, 752 F.3d 1204 (9th Cir. 2014).

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